IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 68 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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KADARBHAI NOORMOHAMMAD MANSURI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 68 of 2001

MR KB ANANDJIWALA for Petitioner No. 1

MR JB PARDIWALA for Petitioner No. 1

MR BD DESDAI, APP for Respondent No. 1

HL PATEL ADVOCATES for Respondent No. 2-4,6-17

RULE UNSERVED for Respondent No. 5

RULE SERVED for Respondent No. 18

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 17/04/2002

ORAL JUDGEMENT

1. Heard ld. counsel Mr. J.B. Pardiwala for the petitioner. Mr. Pardiwala has pointed out that party respondent no.5 Malkhabhai Jayantilal Raval is wrongly shown as party- respondent no.5. His real name is Alkhabhai who was initially arraigned as accused, but after investigation, he has not been chargesheeted. So, he may be deleted as party respondent no.5. On account of deletion of name of party-respondent No.5, this application stands disposed of qua respondent no.5 accused. Rule is dischrged so far as respondent no.5 is concerned.

2. The back-bone of submissions of Mr. Pardiwala, ld. counsel for the petitioner is that in absence of copy of the decision taken by the State Government, and on account of non-application of mind by ld. Public Prosecutor, the application preferred by the ld. PP of district Sabarkantha can be said to be cryptic and groundless application without mentioning details as to the cause of withdrawal from prosecution and satisfaction of ld. PP. He has further submitted that along with application, ld. PP has not placed copy of decision taken by the State Government. This is relevant in reference to the nature of the order passed by ld. Judge. According to Mr. Pardiwala, ld. Addl. Sessions Judge, Sabarkantha also ought to have mentioned reasons for granting permission from withdrawal of prosecution.

3. During the course of further submissions by ld. counsel Mr. Pardiwala, ld. counsel Mr. V.H. Patel appearing for respondents accused has fairly submitted that the order passed by ld. Addl. Sessions Judge is not a reasoned order, the application does not speak about the satisfaction of ld. PP. So, and if ld. Addl. Sessions Judge is directed to pass speaking order after hearing the parties on merits, they have no objection. For short, the say of ld. counsel Mr. Patel for the respondents accused is that matter may be sent back to ld. Addl. Sessions Judge to deal with application exh.8 afresh by quashing and setting aside the impugned order.

4. Ld. APP Mr. Desai appearing for the State submits that the Court is authorised to grant such permission and the state is not supposed to point out cause for withdrawal from prosecution, provided ld. pP is satisfied about the decision. Without going into merits of this submission, at least, it can be observed that when State is withdrawing from prosecution in a serious case, than the order granting permission ought to have been passed which can be said to be an order on a reasonable cause. Parties also should feel that justice

is being done and order passed by ld. Addl. Sessions Judge is with proper application of mind. The Court is supposed to record that it is a case of objective application of mind by ld. PP.

5. (i) So, accepting the say of Mr. Patel and without assigning detailed reasons, as ld. counsel for the parties have not pressed for reasoned order, impugned order dated 11.1.2001 below application exh.8 in Sessions Case No. 12/2000 passed by ld. Addl. Sessions Judge, Sabarkantha at Himmatnagar is hereby quashed and set aside.

(ii) Ld. Addl.. Sessions Judge is directed to pass speaking order stating reasons after hearing the application for withdrawal from prosecution afresh -denovo- and if original complainant or any victim is able to point out any fact or point of law to the notice of ld. Addl. Sessions Judge, such submissions shall also be dealt with on merits and the order should be free from influence of the earlier order allowing the State to withdraw from prosecution.

(iii) It will be open for the ld. PP to file fresh and detailed application for the purpose, if he so desires.

6. As the impugned order is quashed and set aside, proceedings of Sessions Case No. 12/2000 shall stand revived and further proceedings shall have to be recorded in the aforesaid case. In such eventuality, it would be open for the ld. counsel appearing for the respondents accused to pray for exemption from personal appearance on behalf of the accused on the date of hearing of application under Section 321 of CrPC. Rule is made absolute accordingly.

17.4.2002 [C.K. BUCH, J]
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